

AN ORDINANCE

AUTHORIZING PURSUANT TO CHAPTER 44 OF TITLE 12, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BETWEEN CHARLESTON COUNTY, SOUTH CAROLINA AND DELFIN GROUP USA LLC; AND MATTERS RELATING THERETO.

**WHEREAS**, Charleston County (the "County"), a public body corporate and politic under the laws of the State of South Carolina desires to enter into a Fee Agreement with Delfin Group USA LLC (the "Company"), which shall provide for payments of fees-in-lieu of taxes for a project qualifying under the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the "Act");

**WHEREAS**, the County and the Company desire to enter into a Fee Agreement as defined in the Act concerning the establishment and expansion of a facility in the County which will consist of certain land, buildings, or other improvements thereon and all machinery, apparatus, equipment, office facilities, furnishings and other personal property required by the Company for the purpose of operating facilities dedicated to the blending, packing and distribution of petroleum products, and any and all activities relating thereto (which properties and facilities constitute a project under the Act and are referred to hereinafter the "Project");

**WHEREAS**, the County has, by an Inducement Resolution adopted on November 6, 2008 (the "Resolution"), taken official action to identify the Project in the Resolution, for purposes of applicable fee-in-lieu of taxes statutes and otherwise;

**WHEREAS**, to the maximum extent allowed under Section 12-44-110(3) of the Act, the Company's investment in the County will include the Company's property at the Project that has previously been subject to regular ad valorem taxes;

**WHEREAS**, the Company has made a previous investment in the County and, during the FILOT investment period, the Company is anticipated to make an additional investment of \$55 million and to create at least 160 jobs in the County;

**WHEREAS**, Charleston County Council (the "County Council") has caused to be prepared and presented to this meeting the form of the Fee Agreement between the County and the Company, which the County proposes to execute and deliver;

**WHEREAS**, as further inducement to the Company, the County will amend a Multi-County Industrial Park Agreement which includes the site of the Project (the "MCIP") so that the Project will be included in the MCIP under the provisions of Article VIII, Section 13 of the Constitution of the State of South Carolina of 1895, as amended (the "State Constitution"), and Section 4-1-170 of the Code of Laws of South Carolina,

1976, as amended (collectively, the “MCIP Law”).

**WHEREAS**, under the provisions of Sections 4-1-175 of the Code of Laws of South Carolina, 1976, as amended, and Section 12-44-70 of the Act (collectively, the “Infrastructure Law”), the County is authorized to use revenues received from payments of fees-in-lieu of taxes under the Infrastructure Law, the Act and/or the MCIP Law for the purpose of defraying a portion of the cost of designing, acquiring, constructing, improving or expanding the infrastructure serving the Project;

**WHEREAS**, the Company has requested the County to use a portion of the above aforementioned payments for the purpose of defraying the costs of designing, acquiring, constructing, improving or expanding the infrastructure serving the Project as permitted by the Infrastructure Law (the “Infrastructure”);

**WHEREAS**, the County Council, having found that the Infrastructure will serve the County and, as a direct result of the acquisition thereof, assist the County in its economic development efforts by inducing the Company to locate the Project in the County, proposes to provide an Annual Special Source Revenue Credit (as defined in the Fee Agreement) against payments of fees-in-lieu of taxes to be made concerning the Project pursuant to the Infrastructure Law, the Act and/or the MCIP Law; and

**NOW, THEREFORE, BE IT ORDAINED** by the County Council in meeting duly assembled as follows:

**Section 1.** Pursuant to the Act and particularly Section 12-44-40(H) and (I) thereof, the County Council has made and hereby makes the following findings:

(a) The Project constitutes a “project” as said term is referred to and defined in Section 12-44-30 of the Act;

(b) It is anticipated that the Project will benefit the general public welfare of the County by providing services, employment and other public benefits not otherwise adequately provided locally;

(c) The purposes to be accomplished by the Project are proper governmental and public purposes;

(d) In addition to the Project’s current investment at the facility, it is anticipated that the cost of planning, designing, constructing and expanding the Project will require expenditures of not less than \$55 million;

(e) The benefits of the Project to the public are greater than the costs to the public;

(f) Neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County

or incorporated municipality or to any charge against its general credit or taxing power; and

(g) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

**Section 2.** In order to promote industry, develop trade and utilize the manpower, agricultural products and natural resources of the State, the form, terms and provisions of the Fee Agreement which is before this meeting and filed with the Clerk to County Council is hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Fee Agreement was set out in this Ordinance in its entirety. The Fee Agreement provides for an assessment ratio of 6% and a fixed millage rate of 260.8 mills, both for a period of 20 years. The Fee Agreement includes, to the maximum extent allowed under Section 12-44-110(3) of the FILOT Act, the Company's previously taxed property at the Project. The Fee Agreement also provides for a special source revenue credit of \$250,000, to be applied against the first five (5) years of fee payments in the amount of \$50,000 per year, all as more fully set forth in the Fee Agreement. The Chair of the County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreement to the Company. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Fee Agreement now before this meeting.

**Section 3.** The Chair of County Council and the Clerk to County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

**Section 4.** The consummation of all transactions contemplated by the Fee Agreement is hereby approved.

**Section 5.** This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

**Section 6.** The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent

of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.